

## Exhibit B

**From:** David Rothstein [mailto:[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)]

**Sent:** Friday, January 22, 2016 4:28 PM

**To:** 'Lewis, Edith' <[edith.lewis@va.gov](mailto:edith.lewis@va.gov)>

**Subject:** RE: Touhy

Edith. By way of clarification, this is the exact same Touhy issue that Jason Rudie already decided in June, when he allowed Dr. Eady to be subpoenaed for a deposition in this case. In fact, my request for him to sign a declaration is much narrower, because it would not involve Dr. Eady being away from patient care at the VA. Thanks, Dave.

David E. Rothstein

Certified Specialist in Employment and Labor Law (S.C.)

(Also licensed in North Carolina)

Rothstein Law Firm, PA

1312 Augusta Street

Greenville, SC 29605

(864) 232-5870

(864) 241-1386 (fax)

[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)

[www.rothsteinlawfirm.com](http://www.rothsteinlawfirm.com)

---

**From:** Lewis, Edith [mailto:[edith.lewis@va.gov](mailto:edith.lewis@va.gov)]

**Sent:** Friday, January 22, 2016 3:46 PM

**To:** 'David Rothstein' <[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)>

**Subject:** Touhy

**Importance:** High

Good afternoon David. I apologize for not being able to speak with you a few minutes ago. I am on conference call but I can respond to you via email while on this call. As you are aware, there is no appeal to Touhy and while you are free to file a motion in state court, you will most likely encounter federal supremacy issues. Additionally, while Dr. Eady might have been approved for other or similar Touhy matters, each Touhy is case specific. Unfortunately, Dr. Eady's declaration could **clearly** be expected to do two things: result in the

appearance of VA favoring one litigant over another; and endorsing or supporting a position advocated by a party.

I apologize to not getting to you sooner. I am preparing for trial and leave for trial prep and trial on Sunday and will not be returning to the office until Friday.

Please do not contact Attorney Jason Rudie for any VA issues that relate to SC as he is no longer handling SC. Please contact me for Columbia, SC issues and Trish Smith for Charleston, SC issues. Also, our direct supervisor is Nicole Price, who is physically located in Atlanta, Georgia.

Thank you and take care!

Edith W. Lewis

Attorney

Department of Veterans Affairs

Office of Regional Counsel

803-647-5793 (direct line)

803-647-5839 (main line)

803-647-2891 (fascimile)

---

**From:** David Rothstein [mailto:[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)]

**Sent:** Wednesday, January 20, 2016 11:39 AM

**To:** Lewis, Edith

**Subject:** [EXTERNAL] RE: DRAFT FOR YOUR REVIEW

Edith. I am writing to follow-up on my e-mail from last Friday asking you to reconsider your position about Dr. Eady's declaration. I would prefer not to have to file a motion with the court seeking to enable Dr. Eady to sign the declaration despite the Touhey regulations. My summary judgment response is due on Monday, Jan. 25. I would like to know something by the end of the day tomorrow so I will know how I need to proceed. As I mentioned to you before, VA Attorney Jason Rudie previously determined that he would allow Dr. Eady to be subpoenaed to a deposition by Palmetto Health's lawyer, Kathy Dudley Helms, and Mr. Rudie also allowed Dr. Eady to sign a declaration about Dr. Ozgur Ozkan, the ophthalmology resident. I am trying to use the least intrusive means to obtain Dr. Eady's statement in this case. Thank you again for your consideration of this matter. I look forward to hearing from you soon. Dave.

David E. Rothstein

Certified Specialist in Employment and Labor Law (S.C.)

(Also licensed in North Carolina)

Rothstein Law Firm, PA

1312 Augusta Street

Greenville, SC 29605

(864) 232-5870

(864) 241-1386 (fax)

[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)

[www.rothsteinlawfirm.com](http://www.rothsteinlawfirm.com)

**From:** David Rothstein [mailto:[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)]

**Sent:** Friday, January 15, 2016 12:21 PM

**To:** 'Lewis, Edith' <[edith.lewis@va.gov](mailto:edith.lewis@va.gov)>

**Subject:** RE: DRAFT FOR YOUR REVIEW

Dear Edith. Thank you for your response. As I mentioned to you on the phone, I do not understand your position on Dr. Eady's Declaration. Jason Rudie previously agreed to allow Dr. Eady's deposition to be taken in this case, despite the Touhy regulations, when pressed by Palmetto Health attorney, Kathy Dudley Helms. The only reason Dr. Eady's deposition was not taken is because Ms. Helms did not schedule it before the discovery deadline. Had the deposition been taken, I am sure that Dr. Eady would have testified consistently with his statement in the Declaration. I did not seek to take Dr. Eady's deposition because I thought Ms. Helms was going to take it and because I believed that I would be able to obtain a Declaration from Dr. Eady. I was not a party to the conversations between Ms. Helms and Mr. Rudie, but I understand that he was fully apprised of Dr. Eady's testimony before the California Medical Board.

In May of 2015, Dr. Eady signed a declaration under somewhat similar circumstances about a conversation he overheard at the VA involving an ophthalmology resident named Dr. Ozgur Ozkan, who is also a client of mine. Mr. Rudie indicated at that time that the Touhy regulations would not preclude Dr. Eady from signing the declaration because it did not involve taking him away from his patient responsibilities or other duties as a VA employee. I am attaching a copy of Dr. Eady's Declaration in Dr. Ozkan's matter.

Dr. Eady's proposed Declaration for Dr. Irani is very similar to the testimony he provided in Dr. Irani's California Medical Board proceeding, pursuant to subpoena by both the California Deputy Attorney General and Dr. Irani's attorney in that case, Marvin Firestone. I am concerned that the Court in South Carolina might not allow the transcript of Dr. Eady's testimony in that case to be admitted into evidence here on summary judgment, because the Defendants here were not a party to the California proceeding. The Declaration also includes testimony about an episode that occurred prior to Dr. Eady's employment at the VA regarding a racially disparaging remark that Dr. Koon made about an African-American resident that showed similar animus to the remark Dr. Koon made about Dr. Irani. Dr. Eady believes that he handled Dr. Koon's remark about Dr. Irani appropriately at the time by immediately informing him that such remark was unacceptable and that if it happened again, he would formally file a complaint against Dr. Koon. You will recall that Dr. Eady was involved a dispute involving Dr. Koon and the USC Orthopaedic Surgery Department at the time, which eventually led to very contentious litigation. I believe that Dr. Eady's actions were appropriate and understandable in that context.

I would respectfully request that you reconsider your position on Touhy and allow Dr. Eady to sign the proposed Declaration. He is merely providing a truthful account of factual matters that he witnessed during his involvement in the Palmetto Health/USC School of Medicine residency program. Although his truthful statement will have the practical effect of benefitting one side in this litigation, we are not asking the VA to endorse anyone's position in the lawsuit. I believe that the Program Letter of Agreement between the VA and Palmetto

Health at the time would allow Dr. Eady's Declaration and testimony. At this point, I am only seeking to use the Declaration to respond to Defendants' summary judgment motion. Thank you for your attention to this matter. I look forward to hearing from you soon. Dave.

David E. Rothstein

Certified Specialist in Employment and Labor Law (S.C.)

(Also licensed in North Carolina)

Rothstein Law Firm, PA

1312 Augusta Street

Greenville, SC 29605

(864) 232-5870

(864) 241-1386 (fax)

[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)

[www.rothsteinlawfirm.com](http://www.rothsteinlawfirm.com)

---

**From:** Lewis, Edith [mailto:[edith.lewis@va.gov](mailto:edith.lewis@va.gov)]

**Sent:** Friday, January 15, 2016 10:47 AM

**To:** 'David Rothstein' <[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)>

**Cc:** Eady, John L. <[John.Eady@va.gov](mailto:John.Eady@va.gov)>

**Subject:** FW: DRAFT FOR YOUR REVIEW

Good morning. I have reviewed the above declaration. This declaration falls with the Touhy regulations as it a disclosure of VA information as Dr. Eady was a VA employee on VA grounds during the events narrated in his declaration. After considering the Touhy Factors, especially factors that the release could be expected to result in the appearance of VA favoring one litigant over another and endorsing or supporting a position advocated by a party, this release is disapproved.

Thank you!

Edith W. Lewis

Attorney

Department of Veterans Affairs

Office of Regional Counsel

803-647-5793 (direct line)

803-647-5839 (main line)

803-647-2891 (fascimile)

**From:** David Rothstein [mailto:[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)]  
**Sent:** Wednesday, January 13, 2016 11:21 AM  
**To:** Lewis, Edith  
**Cc:** 'John Eady'  
**Subject:** [EXTERNAL] RE: Irani v. Palmetto Health et al.

Edith. I am attaching a copy of the proposed Declaration for Dr. Eady. He has already reviewed this and approved it as truthful and accurate. He wanted to make sure that he was complying with the VA's protocols for these matters before actually signing the document. You may recall that, earlier in this case, the VA attorney from Minneapolis, Jason Rudie, agreed to waive the Touhey regulations to allow Defendants' counsel to take Dr. Eady's deposition. For some reason, the lawyers decided not to take Dr. Eady's deposition; however, he has been listed by both sides as a potential witness in the case. I need to get this signed this week, if at all possible, because Dr. Eady is going out of town over the weekend, and my summary judgment brief is due on Monday, Jan. 25. Please call me if you would like to discuss this further. Thank you. Dave.

David E. Rothstein

Certified Specialist in Employment and Labor Law (S.C.)

(Also licensed in North Carolina)

Rothstein Law Firm, PA

1312 Augusta Street

Greenville, SC 29605

(864) 232-5870

(864) 241-1386 (fax)

[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)

[www.rothsteinlawfirm.com](http://www.rothsteinlawfirm.com)

---

**From:** David Rothstein [mailto:[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)]  
**Sent:** Tuesday, January 12, 2016 10:46 AM  
**To:** 'edith.lewis@va.gov' <[edith.lewis@va.gov](mailto:edith.lewis@va.gov)>  
**Cc:** 'John Eady' <[jl\\_eady\\_98@yahoo.com](mailto:jl_eady_98@yahoo.com)>  
**Subject:** Irani v. Palmetto Health et al.

Edith. You may recall that I represent Dr. Afraaz Irani in connection with his termination from the Palmetto Health/USC School of Medicine Orthopaedic Surgery Residency Program in mid 2012. The VA is not a party to that action. Dr. Irani was not allowed to rotate to the VA as he was scheduled to start in Jan. 2012. Dr. John Eady, the Chief of the Orthopaedic Service at the Dorn VAMC, worked briefly with Dr. Irani during Dr. Irani's internship year and on call during his PGY-2 year. Dr. Eady also witnessed a discriminatory comment made about Dr. Irani by Dr. Koon, the program director. I would like for Dr. Eady to sign a declaration that I can submit in opposition to Defendants' motion for summary judgment in the case. Dr. Eady wanted to make sure that he is complying with the VA protocols in this regard, so he asked me to contact you about this. Dr. Eady testified pursuant to a subpoena in Dr. Irani's California Medical Board Hearing in proceedings over his California Medical License, which was denied based on information provided by Palmetto Health/USC. Please call me when you get a minute so we can discuss this. My work contact information is below. My cell phone number is

(803) 920-3571 if you have any trouble reaching me at the office. Thank you. Dave.

David E. Rothstein

Certified Specialist in Employment and Labor Law (S.C.)

(Also licensed in North Carolina)

Rothstein Law Firm, PA

1312 Augusta Street

Greenville, SC 29605

(864) 232-5870

(864) 241-1386 (fax)

[drothstein@rothsteinlawfirm.com](mailto:drothstein@rothsteinlawfirm.com)

[www.rothsteinlawfirm.com](http://www.rothsteinlawfirm.com)